

MAY 24 2004

Before the  
Federal Communications Commission  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In the Matter of Application of )  
 )  
 **RICHARD A. BURTON** )  
 )  
 For General Mobile Radio Service License )  
 )

WT Docket No. 04-153  
FCC File No. 0001606053

To: Administrative Law Judge  
Arthur I. Steinberg

**MOTION TO DELETE ISSUES, GRANT APPLICATION  
AND TERMINATE PROCEEDING**

1. Pursuant to section 1.229 of the Commission's rules,<sup>1</sup> the Enforcement Bureau (the "Bureau") moves to delete the issues specified in this proceeding. As the Bureau will demonstrate, the *HDO* resulted from a case of mistaken identity. Consequently, this proceeding should never have been commenced. Further, inasmuch as the captioned applicant is otherwise qualified, deletion of the issues makes it appropriate to grant the application and terminate this proceeding.

2 The *Hearing Designation Order*, DA 04-1045 (rel. Apr. 19, 2004) ("*HDO*") commencing this proceeding recites that the Commission cannot grant the captioned GMRS application of Richard A. Burton without a hearing because of substantial and material questions of fact concerning Mr. Burton's character. These questions arose because of Mr. Burton's criminal convictions involving transmitting radio signals without a license, administrative adjudications which found Mr. Burton unqualified to hold a Commission license, and possible unlicensed operations following his most recent such

<sup>1</sup> 47 C.F.R. § 1.229.

conviction. Accordingly, the *HDO* designated Mr. Burton's application for hearing to determine: (a) the effect of his criminal convictions and prior administrative adjudications on his qualifications; and (b) whether he had engaged in unlicensed operations following his October 2000 conviction and, if so, the effect thereof on his qualifications. The *HDO* required the presiding Administrative Law Judge to determine, based on the evidence adduced, whether Mr. Burton is qualified to be a licensee and whether the captioned application should be granted. The *HDO* placed the burdens of proceeding and proof on Mr. Burton. A copy of the *HDO* was mailed to the address specified in his application: 247 Greybull Ave., Greybull, WY 82426.

3. The *HDO* assumed that the Richard A. Burton referenced in the instant proceeding is the same person described in a 2003 Hearing Designation Order. *See Richard A. Burton*, 18 FCC Rcd 16301 (WTB 2003) ("2003 *HDO*"). However, information recently sent to the Commission reveals that such is not the case. In an affidavit, Richard Allan Burton, the individual whose application is now at issue, swears under penalty of perjury that he resides in Wyoming, has never resided in California, and has never been convicted of any violation of the Communications Act or sentenced to a penal institution.<sup>2</sup> By contrast, the applicant named in the 2003 *HDO*, Richard Allen Burton, resided in California<sup>3</sup> and was convicted on four different occasions of violating

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<sup>2</sup> *See* Attachment A, Affidavit (of Richard A. Burton).

<sup>3</sup> The 2003 *HDO* was mailed to the applicant's address of record: 1614 W. 257<sup>th</sup> Street, Unit 10, Harbor City, CA 90710. With the Bureau, Mr. Richard Allen Burton subsequently filed a joint motion to dismiss his application, which the presiding Administrative Law Judge granted. *See Memorandum Opinion and Order*, FCC 03M-41 (rel. Sept. 30, 2003).

the Communications Act by transmitting radio signals without a license. *Id.*, 18 FCC Rcd at 16302-03, ¶¶ 5, 6, 8 and 9 (and related footnotes).

4. Section 1.229(d) provides that motions to enlarge, change or delete issues shall contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge of the facts alleged. In this case, Mr. Burton's affidavit makes plain that he is not the person described in the instant *HDO* or the one described in the 2003 *HDO*. Moreover, Mr. Burton's affidavit shows that, unlike his California namesake, he has never been convicted of violating the Communications Act. Inasmuch as the issues specified in the *HDO* are predicated on the mistaken belief that Mr. Burton is the same person as the one described in the criminal and administrative proceedings listed in the *HDO* (and the 2003 *HDO*), the Bureau submits that the proper course is to delete the issues,<sup>4</sup> grant Mr.

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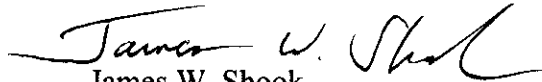
<sup>4</sup> *Muncie Broadcasting Corp.*, 89 FCC 2d 123, 125-26 (Rev. Bd. 1982) (an issue designated through mistake of fact may properly be deleted); *Post-Newsweek Stations, Florida, Inc.*, 52 FCC 2d 883, 885 (Rev. Bd. 1975) (compelling circumstances warranting the deletion of an issue exist where the Commission, prior to designation, has overlooked or misconstrued pertinent information); *Southern Broadcasting Co.*, 40 FCC 2d 1109, 1113-14 (issue deleted where clear error was made as to the underlying facts); *New Era Broadcasting Co., Inc.*, 22 FCC 2d 172, 177-78 (Rev. Bd. 1970) (where new factual information is submitted which clearly eliminates the need for resolution of an issue through the hearing process, an issue may be deleted); *Lorain Community Broadcasting Co.*, 5 FCC 2d 808, 809 (Rev. Bd. 1966) (an issue may be deleted where the body designating the matter for hearing made some obvious error).

Burton's application and terminate this proceeding.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Wm H. Davenport", with a long horizontal flourish extending to the right.

William H. Davenport  
Chief, Investigations and Hearings Division  
Enforcement Bureau

A handwritten signature in dark ink, appearing to read "James W. Shook", with a long horizontal flourish extending to the right.

James W. Shook  
William Knowles-Kellett  
Attorneys

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3-B443  
Washington, D.C. 20554  
(202) 418-1420

May 24, 2004

CERTIFICATE OF SERVICE

Moris Martinez, a clerk in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has, on this 24th day of May, 2004, sent by first class United States mail, facsimile, or delivered by hand, one copy of the foregoing "Motion to Delete Issues, Grant Application and Terminate Proceeding" to each of the following:

Richard A. Burton (by facsimile and by U S. mail)  
247 Greybull Ave.  
Greybull, WY 82426

Administrative Law Judge Arthur I. Steinberg (by hand)  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 1-C861  
Washington, D.C. 20054

  
Moris Martinez

## **ATTACHMENT A**

states:

1. M

**states:**

hereto and made a part hereof.

discharge is attached hereto and made a part hereof.

institution.

DATED this 16 day of May, 2004.

Richard A. Burton

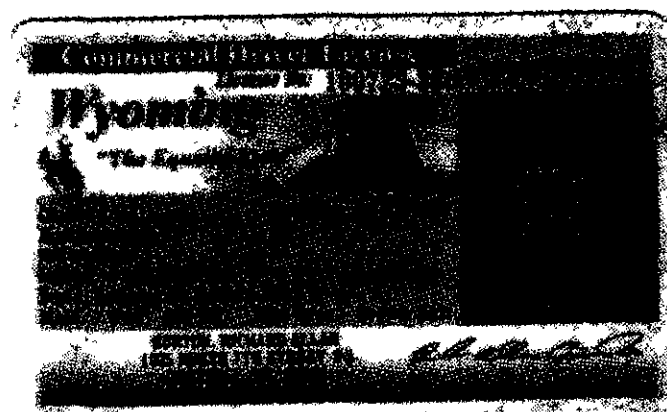
[illegible]

Subscribed and sworn to before me this 10<sup>th</sup> day of May, 2004,

by Richard A. Burton.

Notary Public

My commission expires 2/9/07





Nebraska Methodist Hospital

OMAHA, NEBRASKA

# Certificate of Birth

This Certifies that *Reinard Adams*

was born to *Henry & Louise Adams*

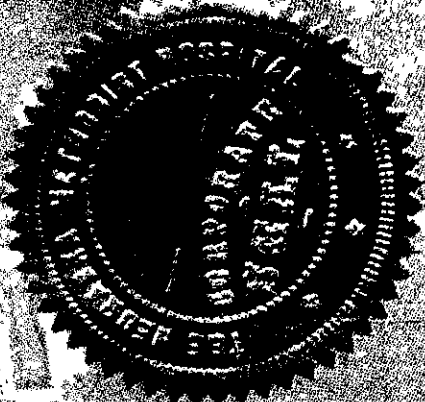
in this Hospital at *2:30* o'clock *P.M.* on *June 10*

the *10* day of *June* *1940*

In Witness Whereof I and the Board of Directors of the

to be signed by the

is hereby attested

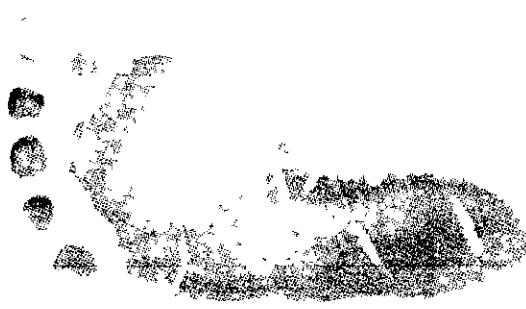


*W. A. [Signature]*

## FAMILY HISTORY

Father's full name Happy Buckner  
 Birthplace Hubbard Texas Age 43  
 Mother's maiden name Loretta Marie Shipley  
 Birthplace Omaha Nebraska Age 37  
 Residence at time child was born 4214 Acker Ave - Omaha NE 68  
 Sex of child M/F Weight at birth 6 pounds 2 1/2 ounces Length 15 1/2 inches

Baby's left footprint →



→ Mother's left thumbprint

← Baby's right footprint



← Mother's right thumbprint

This Certificate should be carefully preserved. It is an important record of the facts pertaining to your child's birth. The birth has been recorded as required by law in the office of M. D. H. Douglas County Health Dept from which an official certificate may be obtained.

